IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.94 OF 1981.

Maharashtra Industrial Development Corporation ..Plaintiff

versus

M/s.Starit Water Treatment Company Pvt. Ltd. ..Defendant.

Mr.K.H.Mody i/b. Little & Co. for the Plaintiff

None for the defendant

Coram : S.R.Sathe, J.
Dated : 29th March, 2007

JUDGMENT.

1. Maharashtra Industrial Development Corporation (hereinafter called as MIDC) has filed this suit against the defendant company for recovery of the amount of Rs.81,816.42 paise and future interest on the said amount at the rate of 18% per annum.

2. The plaintiff's case in brief is that the Plaintiff is a Maharashtra Government Undertaking, controlled and managed by the Government of Maharashtra. The defendant company is having the business of manufacturing waste and water treatment plant. The plaintiff wanted to purchase

chlorinators. Hence plaintiff placed an order for two pressure feed type gas chlorinators, each having capacity of 3 kg, with the defendant company by issuing letter dated 17.11.1976. The defendant accepted the order and asked for enhanced charge for supervising the erection and accordingly plaintiff agreed for the same. The price of each chlorinator was fixed at Rs.14,000/-. It was agreed to pay 90% of the price against the proforma invoice and balance 10% was to be paid on receipt of material at site. As per the contract the defendant gave guarantee in respect of the proper working of the said chlorinators for a period of one year from the date of commissioning of the chlorinators or for a period of 18 months from the date of supply of the said chlorinators whichever is earlier.

3. In pursuance of the said contract, the defendant supplied the Chlorinators by end of November 1976 and sent invoice dated 30.11.1976. The plaintiff paid Rs.27,774.80p being 90% of the invoice price. The defendant company delayed the work of commissioning of the chlorinators. Finally they completed the erection and commissioning work in July 1977. However, due to difficulties in the

said chlorinators the same could not be operated even for a minute. The plaintiff called the defendant to rectify the difficulties or to refund the amount paid to them. The defendant, further failed to comply the said requisition of plaintiff on the false pretext that their technician had attended to the minor difficulties from time to time and that since inception they were working in the best condition.

4. It is plaintiff's case that as the chlorinators supplied by the defendant were not working, the plaintiff was required to purchase two new chlorinators and spent Rs.33,400/- for the same. As the chlorinators supplied by the defendant were defective, plaintiff called upon the defendant to return the amount of Rs.27,274.80 and Rs.33,400/- towards the damages caused to them on account of breach committed by the defendant. Inspite of the said demand the defendant failed to pay the amount. Hence the plaintiff filed the present suit.

5. The defendant filed its written statement and opposed the suit claim on several grounds. Firstly, they contended that the suit is bared by

law of limitation. Secondly, they contended that there was no delay on their part in supplying the chlorinators. According to the defendant there was no defect in the chlorinators, on the contrary the plaintiff, inspite of practical directions and instructions provided by the Engineer of the defendant to the representatives of the plaintiff for the operation and functioning of the chlorinators failed to operate the same and hence the defendant provided instructions and manual in duplicate with covering letter to the plaintiff on 28.3.1978. It was their contention that they had deputed their Engineer, representative not only to rectify any erecting difficulties of the chlorinators but also to provide practical instruction to the representatives of the plaintiff for proper operation of the chlorinators. According to them they also sought assistance from M/s. Chloro Control in connection with the proper operation and functioning of the chlorinators as the spare parts and raw material was purchased from them. In short, the defendant denied the allegation that there was any difficulty in the chlorinators supplied by them or that there was any mistake in installation of the same and not attended the call

of the plaintiff for carrying out the repairs or removing the defects of the chlorinators. The defendant contended that inspite of the receipt of the chlorinators and further service from the defendant, the plaintiff, on the contrary failed to pay the balance amount of 10%. Thus, according to them nothing was due from the defendant to plaintiff and the suit filed by the plaintiff is misconceived. Hence, on all these grounds the defendant prayed for dismissal of the suit.

6. On these pleadings the following issues are settled.

	Issues	Findings
1.	Whether the defendant proves that the suit is barred by law of limitation as alleged in para 3 of the written statement?	No
2.	Whether the plaintiff proves that they are entitled to refund of the amount of	Plaintiff has proved that they are

	Rs.27,774.80 together with interest at the rate of 18% per annum from 30th March, 1976 till date of payment?	entitled to get refund of Rs.27,774.80 from the defendant and interest thereon at the rate of 8% from the date of notice i.e 6.8.80 till the realisation of the amount
3.	Whether the plaintiff proves that they have suffered the damages in the sum of Rs.33,400/- on account of non-supply of proper goods by the defendant as alleged in para 9 of the plaint?	No
4.	What reliefs the plaintiff is entitled?	As stated below in final order

I have given my findings as mentioned against the same.

7. From the perusal of the record it appears that the plaintiffs were directed to file affidavit of evidence in lieu of examination in chief and accordingly the plaintiff filed the affidavit of evidence together with compilation of the documents. When the matter was adjourned for cross examination of the plaintiff, none appeared on behalf of the defendant. The matter was therefore adjourned for defence evidence, but inspite of giving opportunity to the defendant, they failed to produce any evidence and hence the Court (Coram: R.M.S.Khandeparkar, J.) posted the suit for arguments. Thereafter the matter was placed before this Court on 21.3.2007. On that day also none appeared on behalf of the defendant. Hence, the argument advanced by the learned Advocate for the plaintiff was heard.

8. Plaintiff’s witness Sudhakar Wagh,

Executive Engineer, MIDC Division, 2nd Wagle Estate, Thane has filed affidavit of evidence on behalf of the plaintiff and has stated that he is conversant with the facts of the suit. He has specifically stated that as per the order placed by the plaintiff, the defendant company supplied two pressure feed type gas chlorinators, but they did not carry out the installation work immediately and finally the said work was completed by them in July 1977. He has categorically stated that there were defects in the said chlorinators and as a result of the same the chlorinators could not work for a minute. The plaintiff's witness has also stated that this fact was brought to the notice of the defendant and time and again letters were written by the plaintiff to the defendant to rectify the defect. At some time the defendant even deputed his technician and did some work but could not rectify the defect and ultimately the chlorinators did not work and were of no use to the plaintiff. Even from the defendant's own contention it is very clear that even on 8.2.1978 they had even taken assistance of the persons who had supplied them raw material for the said chlorinators and rectified the defect. So, one thing is certain that the

chlorinators supplied to the plaintiff were not properly working. It is also not in dispute that there was guarantee period of one year for the said chlorinators. So, if the chlorinators are found to be not working right from installation till the end of the guarantee period, then naturally the plaintiff is justified in asking the defendant to return the price of the said chlorinators. It appears from the documents produced by the plaintiff that plaintiff had even asked the defendant to take away their chlorinators and refund the amount, but on one pretext or the other the defendants did not do so. We cannot ignore the fact that the plaintiff is a Government undertaking. There is absolutely nothing on record to show that the witness who has filed the affidavit or any other person from the plaintiff's undertaking was having any grudge or grievance against the defendant company so as to make the false allegation that the chlorinators supplied by the defendant were not in proper condition and that there were defects. A feeble attempt is made by the defendant in their reply that the plaintiff issued notice to them under the influence of one Koacher. However, in order to substantiate this

the defendant has failed to adduce any evidence. The entire evidence of plaintiff and the documents produced by the plaintiff have gone unchallenged in as much as the defendant did not cross examine the plaintiff. So, there is no reason to disbelieve the evidence of the plaintiff. So, I hold that the plaintiff has proved that the chlorinators supplied to them were defective.

9. From the above discussion, it is also clear that installation was done in July 77. Guarantee period was over in July 1978. During that period defendant did not rectify the defects though asked by plaintiff, so cause of action to call for refund of price arose for the first time in July 1978. Suit is filed on 15.1.1978. So it is in time.

9. Though the plaintiff has claimed amount of Rs.33,400/- as damages as plaintiff was required to spent it for installing new chlorinators, they have not adduced any evidence in that behalf. They are certainly not entitled to claim the same. At the most they could have asked for difference of the same i.e. difference between the earlier chlorinators and the subsequent chlorinators and

the incidental charges were required to be made as a result of the defective material, but no cogent evidence is adduce in that behalf. Moreover, the learned Advocate for the plaintiff has also fairly submitted that plaintiff is not claiming the damages or compensation.

10. Though the plaintiff has claimed interest on the amount of price at the rate of 18% per annum it must be noted that admittedly there was no any specific contract in that behalf. So taking into consideration the provisions of Section 34 of C.P.C. and the provisions of Interest Act, it would be proper to direct the defendant to pay the interest at the rate of 8% per annum from the date of notice i.e. on 6.8.1980 till the filing of the suit and future interest also at the same rate till realisation of the amount. Hence I pass the following order.

ORDER

. The defendant to pay plaintiff Rs.27,714.80p and future interest on the said

amount at 8% per annum from the date of notice i.e. from 6.8.1980 till filing of the suit and future interest also at the same rate from the date of filing of the suit till realisation of the amount.

. Defendant to pay plaintiff the proportionate cost of this suit and bear their own.

(S.R.Sathe, J.)

For the reasons recorded separately I pass the following order:

. The defendant to pay plaintiff

Rs.27,714.80p and future interest on the said amount at 8% per annum from the date of notice i.e. from 6.8.1980 till filing of the suit and future interest also at the same rate from the date of filing of the suit till realisation of the amount.

. Defendant to pay plaintiff the proportionate cost of this suit and bear their own.

(S.R.Sathe, J.)